



1 threatened with further harm. The acts are alleged to have occurred between October 30, 2010, and  
2 November 7, 2012. *Id.*

3 Defendants oppose the motion, suggesting the complaint is merely one in a string of similar  
4 complaints raised by plaintiff. Defendants argue that plaintiff has been seen by medical personnel, but  
5 never complained to them about “continuing” harassment. They allege that plaintiff suffers some  
6 psychological impairment, but refuses to take medication to treat it and that his requests to be relocated  
7 to Lovelock have been denied on the basis that he has enemies who are incarcerated there.

8 Legal Standard

9 To win a preliminary injunction, the plaintiff must show: (1) there is a likelihood of irreparable  
10 harm; (2); there exist serious questions going to the merits of the claims (3) the balance of hardships tips  
11 sharply in plaintiff’s favor; and (4) public interest favors the preliminary injunction. *Alliance for the Wild*  
12 *Rockies v. Cottrell*, 632 F.3d 1127, (9<sup>th</sup> Cir.2011); *see also Winter v. Natural Resources Defense*  
13 *Counsel, Inc.*, 555 U.S. 7, 129 S.Ct. 365 (2008).

14 Taking the allegations made by plaintiff in his complaint as true, the answers to the above  
15 questions weigh in his favor. He has presented specific facts supporting his allegations, the facts he has  
16 alleged represent a possibility of physical injury including exposure to HIV - an irreparable harm in this  
17 court’s view. Moreover, public interest is never served where persons who are incarcerated suffer  
18 ongoing violations of their rights and are exposed to physical harm directly or indirectly at the hands of  
19 those charged with their care and safety.

20 However, two issues strongly militate against granting a preliminary injunction: First, the  
21 majority of the actions complained of occurred well before the complaint or the motion for preliminary  
22 injunction were filed, between 2010 and May of 2012. The complaint was not filed until August of  
23 2012, and the motion for injunction was not filed until November of 2012. Plaintiff has not provided  
24 any evidence that the harassment is ongoing.

25 In his response to the court’s order directing the submission of evidence, plaintiff has provided  
26 copies of grievances dated early 2010 to mid-2012. His affidavit in support does not suggest any  
27 incidents beyond July 21, 2012. He alleges that it took prison officials 472 days to take any action to  
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1 protect him after an attack by S c/o Baker on February 16, 2012, but he acknowledges that S c/o Baker  
2 was removed from his housing unit on May 31, 2013. ECF No. 27, p. 1. This took place before plaintiff  
3 filed his complaint.

4 A preliminary injunction cannot be issued for possible future injury, there must exist at the time  
5 the injunction is requested an actual threat of irreparable harm. *Regents of University of California v.*  
6 *American Broadcasting Companies, Inc.*, 747 F.2d 511, 523-24 (9th Cir. 1984).

7 In addition, plaintiff has stated that he wants is to meet with the defendants in an attempt to settle  
8 the grievances and end the harassment. *See* Supporting Exhibits (ECF No.21) at 3; Argument (ECF No.  
9 28) at 13. Because a mediation has been set (ECF No. 20), plaintiff's requested relief may be obtained  
10 before the need for trial. Thus the need for injunctive relief would be rendered moot.

11 Given that plaintiff has not demonstrated that he is in immediate risk of harm, that the offending  
12 officers are no longer working in his housing unit and that plaintiff is to be given an opportunity to meet  
13 with officials to resolve the matter through the mediation that has been scheduled, there is no basis to  
14 issue a preliminary injunction.

15 **IT IS THEREFORE ORDERED** that the motion for preliminary injunction (ECF No. 6) is  
16 **DENIED.**

17 DATED: June 28, 2013.

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20 UNITED STATES DISTRICT JUDGE